



Universal Service Administrative Company
Rural Health Care Division

February 8, 2002

FILED/ACCEPTED

FEB 17 2009

Federal Communications Commission
Office of the Secretary

Mr. William F. Caton
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, DC 20554

WL Docket No. 02-60

RE: In the Matter of Requests for Review of Decisions of the Universal Service Administrator,
Federal-State Joint Board on Universal Service, ~~CC Docket No. 96-45~~;

Rural Health Care Universal Service Support Mechanism; Administrator's Referral of
Appeal to Federal Communications Commission for Potential Waiver and Remand of
Appeal received January 18, 2002 (dated January 16, 2002) concerning Rural Health Care
Providers:

#11697 Stillaguamish
#11711 Yakama Health Center
#11713 Nooksack Tribal Health Center
#11715 Neah Bay Health Center
#11718 Tulalip Health Clinic
#11719 Muckleshoot Tribal Clinic
#11722 Sauk-Suiattle Health Clinic

Dear Mr. Caton:

The Universal Service Administrative Company (USAC), administrator of the Rural Health Care Universal Service Support Mechanism, has determined that its action or inaction improperly delayed the posting of FCC Form 465s for competitive bids on the Rural Health Care Division (RHCD) website, thereby adversely affecting seven Portland Area Indian Health Service applicants seeking universal service support.

The above-referenced applicants have appealed this delay to USAC in accordance with 47 C.F.R. § 54.719 and the resulting reduction in support that it will cause. Pursuant to the Commission's regulations; however, USAC is constrained from providing Applicants with a remedy under the circumstances presented here. Therefore, in the interest of equity and administrative efficiency, USAC believes that the appropriate course of action is for USAC to transmit the above-referenced applicants' appeals directly to the Commission with a request that the Commission consider

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granting a waiver of program rules and remand the appeal to USAC for reconsideration. USAC has followed this procedure in past instances of administrator error or omission. See *In the Matter of Request for Waiver by Runnemede Public Schools, Runnemede, New Jersey* (rel. Dec. 21, 1999).

The circumstances giving rise to this matter are as follows:

RHCD received 34 FCC Form 465s from the Portland, Oregon Indian Health Service office on June 28, 2001. RHCD found that several of the applications had invalid address information, which prevented verification that the sites were rural, or determination of their distance to the nearest large city. Some of the sites appeared to be urban. Eleven unresolved sites were set aside for further review. However, on July 1, RHCD transferred its mail processing center and all pending applications from Lawrence, KS to Whippany, NJ, and it was not apparent that these applications needed further review. The other 23 sites were timely posted on the RHCD website on July 8, 2001. A subsequent review in November 2001 discovered that seven of these 11 sites were rural. This delay in posting these applications limits their eligibility for Universal Service support until December 27, 2001, rather than August 8, 2001, as for the other 23 sites. Thus, these seven sites stand to lose more than four months of universal service support due to the Administrator's failure to timely post the FCC Form 465s.

Because 23 of the 30 eligible sites in this network were posted on July 8, 2001, any competitive telecommunications carrier that contacted IHS would have learned that they needed service for 34 (including urban) sites, not just the 23 listed on RHCD's web site. Further, the applicants have stated that no competitive bids were received, and that all sites elected to continue receiving service under FTS 2001 as the most cost-effective option. Although Ms. Werny's statement that they are "appealing letter dated November 28, 2001 regarding Funding Year 2001 Service Request posting date of December 12, 2001" is unclear as to the relief sought and appears to incorrectly state the posting date of 11/28/01, RHCD has verified that the appellant understands that the delayed posting will limit support. While RHCD has not issued Funding Commitment Letters for these sites, RHCD believes the appellant would be eligible to appeal the reduced support when funding commitments are issued, and it is in the applicants' and RHCD's interest to resolve this issue at this time.

Therefore, for the reasons set forth above, USAC respectfully urges the Commission to consider granting a waiver of the 28-day competitive bidding requirement under the circumstances presented here, so that RHCD may process all 30 applications with the same eligibility date. See *In the Matter of Request for Waiver by Runnemede Public Schools, Runnemede, New Jersey* (rel. Dec. 21, 1999).

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We would be pleased to provide any additional information you may require and to answer any questions you may have about this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Scott Barash', written over a horizontal line.

D. Scott Barash

Vice President and General Counsel

Enclosure: Letter of Appeal

cc: Lee Ann Werny, IHS

wermy, Lee Ann

From: Wermy, Lee Ann
Sent: 16 January, 2002 2:43 PM
To: 'rhc-admin@universalservice.org'
Subject: Letter of Appeal - Year 4

Please let this email serve as official notice to appeal the following HCPs for Year 4:

- 1) HCP # 11697
HCP Name: Stillaguamish
- 2) HCP# 11711
HCP Name: Yakama Health Center
- 3) HCP# 11713
HCP Name: Nooksack Tribal Health Center
- 4) HCP# 11715
HCP Name: Neah Bay Health Center
- 5) HCP# 11718
HCP Name: Tulalip Health Clinic
- 6) HCP# 11719
HCP Name: Muckleshoot Tribal Clinic
- 7) HCP # 11722
HCP Name: Suak-Sulattle Health Clinic

PURPOSE FOR APPEAL:

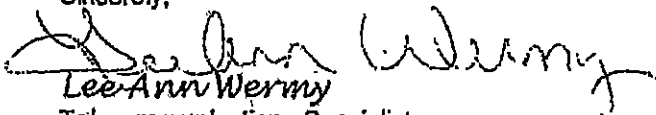
I am appealing letter dated November 28, 2001 regarding Funding Year 2001 Service Request posting date of December 12, 2001. I am not sure why these were processed late and/or differently than all other Form 465s submitted by me on June 26, 2001.

As part of the appeal process, I will also fax this email with a photocopy of the RHCD letter that was received in our office on December 3, 2001. For documentation purposes, I will also be providing a photocopy of the HCP Application Status of Form 465 from the USAC/RHC website which shows these forms were received in your office dated June 28, 2001.

Should you have any questions or need additional information or documentation, please contact me, as I am the person who can most readily discuss this appeal with RHCD.

Your consideration of this appeal is greatly appreciated.

Sincerely,



Lee Ann Wermy

Telecommunications Specialist
Portland Area Indian Health Service
1220 SW 3rd Ave., Rm. 476
Portland, OR 97204

Phone # (503) 326-3527
Fax # (503) 326-2539

email address: lwermy@pao.portland.lhs.gov



Universal Service Administrative Company
Rural Health Care Division

February 8, 2002

Lee Ann Wermey
Portland Area Indian Health Service
1220 SW 3rd Ave., Room 476
Portland, OR 97204

RE: Your correspondence dated January 16, 2002 concerning Rural Health Care Providers:

#11697 Stillaguamish
#11711 Yakama Health Center
#11713 Nooksack Tribal Health Center
#11715 Neah Bay Health Center
#11718 Tulalip Health Clinic
#11719 Muckleshoot Tribal Clinic
#11722 Sauk-Suiattle Health Clinic

Dear Ms. Wermey:

After thorough review and investigation, the Rural Health Care Division ("RHCD") of the Universal Service Administrative Company has completed its evaluation of your letter of appeal concerning Universal Service support of telecommunications services for the above listed Portland Area Indian Health Service (IHS) facilities. This letter sets forth RHCD's decision concerning the above-referenced letter.

Decision on Appeal: Denied and Transmitted to the FCC for Further Consideration

Explanation of Decision: The RHCD has verified that an administrative delay in processing Form 465s for these sites will cause a significant reduction in their support from the Universal Service support mechanism. In particular, the delay in posting these 7 applications on the RHCD website will result in their receiving 140 days less support than the other 23 eligible IHS facilities in the consortium. However, USAC is constrained from providing a remedy under these circumstances, as that would require waiving the 28-day posting requirement for these sites. Therefore, in the interest of fairness and administrative efficiency, USAC has transmitted this appeal directly to the Federal Communications Commission with a request that the Commission consider granting a waiver of program rules and remand the appeal to USAC for reconsideration.

Sincerely,

RHCD-USAC

Rural Health Care Division
Universal Service Administrative Company